

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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Opening Statement Ranking Member Elijah E. Cummings

Hearing on “Examining Preservation of State Department Federal Records” September 12, 2016

Today is our third emergency hearing about Secretary Clinton’s emails in four business days. I believe this Committee is abusing taxpayer dollars and the authority of Congress in an astonishing onslaught of political attacks to damage Secretary Clinton’s campaign for president.

This is the first time in my 20 years in Congress that I have personally witnessed the oversight power of this Committee abused in such a transparently political manner to directly influence a presidential campaign.

The point of today’s hearing is to investigate baseless Republican accusations that Secretary Clinton or her aides ordered the destruction of emails to conceal them from investigators.

The most important fact for today’s hearing is that the FBI already investigated these accusations and thoroughly debunked them. They interviewed witnesses, examined forensic evidence, and concluded that these accusations have no merit.

FBI Director Comey stated: “we found no evidence that any of the additional work-related emails were intentionally deleted in an effort to conceal them.” He also said this: “We didn’t find any evidence of evil intent and intent to obstruct justice.” As he emphasized in a memo to his staff just last week, “the case itself was not a cliff-hanger.”

Of course, Republicans did not like the answers the FBI Director gave. So they simply manufactured today’s hearing out of thin air. This entire hearing is a contrived campaign photo-op. Here is the playbook Republicans are using:

- Step One: Publicly accuse the witnesses of criminal activity—no matter how ludicrous—and then refer them to the U.S. Attorney’s office for criminal investigation.
- Step Two: The next day, invite these same witnesses to an emergency hearing on those criminal accusations, and then rush to issue a flurry of unilateral subpoenas demanding that they testify. No debate. No vote.

- Step Three: Express false outrage when these witnesses—who you just accused of criminal activity—take advice from their counsel to assert their Fifth Amendment right not to testify.

There you have it. Presto. Instant photo op. This is what happened to Mr. Combetta and Mr. Thornton despite the fact that a team of career law enforcement agents at the FBI just unanimously recommended against bringing any criminal charges in this case.

Then there is Bryan Pagliano, the IT specialist who worked on Secretary Clinton's email system. Mr. Pagliano has already been interviewed by the FBI, and the FBI provided us with the results of his interview. But Republicans disagree with the FBI's conclusions, so here we are.

Mr. Pagliano has already asserted his Fifth Amendment rights before Congress. He did this when Chairman Gowdy issued his own unilateral subpoena to force him to appear before the Benghazi Committee on this same issue. Obviously, Mr. Pagliano was concerned about the criminal accusations that Republicans were making, so his attorneys advised him to assert the Fifth Amendment.

There is no legitimate reason for Republicans to force Mr. Pagliano to appear yet again before Congress just to assert his Fifth Amendment rights one more time. How many times will Republicans do this? Will they force him to take the Fifth in front of the Science Committee next? How about Homeland Security and Intelligence? Should he have to go to those committees too? This is an absolute abuse of authority.

Now, Chairman Gowdy and I disagree about many things, but I give him credit for one thing. At least when he subpoenaed Mr. Pagliano, he did it in a private session. He did not force Mr. Pagliano to assert the Fifth in public just to humiliate him, and I respect him for that.

Let me say this as plainly as I can. If this Committee's goal were just to get Mr. Pagliano or other witnesses on the record asserting their Fifth Amendment rights, we could do that easily in a private session just like Chairman Gowdy did with Mr. Pagliano a year ago.

There is no legitimate reason to force Mr. Pagliano, or the other witnesses who were subpoenaed for this hearing, to assert the Fifth Amendment in open session. There is only an illegitimate reason—to get a photo-op that Republicans think could harm Secretary Clinton's presidential campaign.

Some may argue that Mr. Pagliano or Mr. Combetta should testify before us because they received limited use immunity for their statements to the FBI. But no lawyers worth their salt are going to let their clients testify before a congressional committee whose Chairman just sent another referral for criminal prosecution—no matter how frivolous the accusations are.

Pursuing these kinds of blatantly political attacks undermines the integrity of our Committee, the Congressional process, and the Constitutional rights that are supposed to protect our citizens against unsubstantiated accusations just like these.

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